last analysis, to rest on this view. On the other hand the power to delegate the taxing power is recognized or taken for granted in *Commissioners* v. *State,* 45 Ala. 399; *Baltimore* v. *State,* 15 Md. 376; *State* v. *West Duluth Land Co.,* 75 Minn. 456; *People ex rel.* v. *Flagg,* 46 N. Y. 401; *Brown* v. *City of Galveston,* 97 Tex. 1. It has been held that the commissioners are not officers of the city, but, it would seem, are agents of the legislature to act for it in collecting the taxes. *Astor* v. *Mayor,* 62 N. Y. 567; *David* v. *Portland Water Committee,* 14 Ore. 98; *Philadelphia* v. *Field,* 58 Pa. St. 320.

The cases which fall under Gray's third class hold that the legislature has complete power over matters of general or governmental concern, but that over those of purely local concern legislative control is impliedly limited by the right to local self-government. This recognizes the dual nature of municipal corporations. They are, at the same time, both general governmental, political instruments and the instrument of local self-government with some of the rights and franchises of a corporation. The police are generally held to be under legislative control. *Churchill* v. *Walker,* 68 Ga., 681; *Baltimore* v. *State,* 15 Md. 376; *Newport* v. *Horton,* 22 R. I. 196; So also are streets and roads. *People ex rel.* v. *Walsh,* 96 Ill. 232; *People ex rel.* v. *Flagg,* 64 N. Y. 401; The fire department on the other hand is considered a matter of purely local concern. *State ex rel.* v. *Denny,* 118 Ind. 449; *State ex rel.* v. *Fox,* 158 Ind. 126; *Lexington* v. *Thompson,* 113 Ky. 540. So also is the matter of a water supply in *State ex rel.* v. *Barker,* 115 Ia. 96; and in *Blades* v. *Water Com'rs,* 122 Mich. 366. The contrary is held in *Cole* v. *Gray,* 7 Houst. (Del.) 44, and in *David* v. *Portland Water Committee,* 14 Ore. 98. Parts, under consideration in the principal case, are held to be local in nature in *People* v. *Common Council of Detroit,* 28 Mich. 228 and *Vallelley* v. *Board of Park Com'rs* (1907), — N. D. —, 111 N. W. Rep. 615, but they are considered of general interest and subject to legislative control in *Astor* v. *Mayor,* 62 N. Y. 567 and *State* v. *West Duluth Land Co.,* 75 Minn. 456. It is difficult, if not impossible, to state where the weight of authority lies with regard to the points involved, but it cannot be denied that the delegation of broad powers to boards or commissions is becoming more and more common. Municipal politics seem to demand it, and the states will go even to the lengths of a constitutional amendment to get it.

F. B. F.

THE RIGHT OF A MARRIED WOMAN TO RECOVER FOR PERSONAL INJURIES.—Plaintiff's wife was injured through the negligence of defendant. Plaintiff brought this action to recover for the injuries. The action was dismissed, and on exceptions by plaintiff, *held,* that where during coverture a wife suffers personal injury either from the direct act of the wrongdoer by use of force, or from his negligence, the wife alone, by reason of the statutes conferring upon her absolute control over her person and the right to sue as if sole, can maintain an action for the damages sustained which upon recovery become her separate property. *Hey* v. *Prime* (1908), — Mass. —, 84 N. E. Rep. 141.

At common law the wife could not maintain a suit to recover damages

for her personal injuries, as that right was vested in her husband, with whom she must join. However, this common law disability has been removed by statutes in nearly all of the states. The tenor of these statutes has been to permit a married woman to sue in her own name for any injury to her property, person, or character. The statutes relating to married women in a few of the states do not permit the wife to sue in her own name to recover damages for personal injuries. These states are as follows: Florida, in which state a married woman cannot maintain an action in her own name, unless she has been licensed to transact business in her own name. (Florida R. S. of 1892, § 1005). See also *Smith* v. *Smith,* 18 Fla. 789; Nevada, where the husband must be joined in all actions where the wife is a party unless the action concerns the wife's separate estate or is between husband and wife, in which cases the wife may sue alone. (Nevada C. L. § 3102); New Mexico, where the wife has been given the right to contract and to hold property, nothing, however, being said about her right to sue in her own name. (Laws of New Mexico, 1907, ch. 37); the law in this regard in North Carolina is similar to that of Nevada. (North Carolina R. C. of 1905 § 408). See also *Harper* v. *Pinkston,* 112 N. C. 293, 17 S. E. 161. In South Carolina a similar rule prevails (South Carolina Code of Civ. Proc., 1902). In Tennessee the husband must be joined as a formal party (Tennessee Code Supp., 1896-1903, p. 679). The right of the wife to sue in her own name for personal injuries has been denied in Texas, on the ground that such damages are community property, and suit should, ordinarily, be brought by the husband. See *Western Union Tel. Co.* v. *Campbell,* 36 Tex. Civ. App. 276, 81 S. W. 580.

The wife having the right to sue in her own name in most of the states, the question arises as to the extent of her recovery. The common law rule that the husband is entitled to the services of his wife is still enforced in all of the states. It necessarily follows that the wife cannot recover for the loss of her services, or for medicine, doctor's bills, or nursing made necessary because of the injury. It has been held by one court that a married woman may recover for the loss of her time. See *Fife* v. *City of Oshkosh,* 89 Wis. 540, 62 N. W. 541. However, this case stands alone, as it has been held in the following cases that there can be no recovery for loss of time by a married woman in an action for personal injuries unless she is engaged in a separate and independent employment. *City of Bloomington* v. *Annett,* 16 Ill. App. 199; *Tuttle* v. *The C. R. I. & P. R. R. Co.,* 42 Iowa 518; *Thomas* v. *Town of Brooklyn,* 58 Iowa 438, 10 N. W. 849; *Fleming* v. *Town of Shenandoah,* 67 Iowa 505, 25 N. W. 752; *City of Wyandotte* v. *Agan,* 37 Kan. 528, 15 Pac. 529.

Another point on which the courts are not in accord is the right of the wife to recover for the impairment of her working capacity. In *Powell* v. *The A. & S. R. R. Co.,* 77 Ga. 192, 3 S. E. 757, the court held that the wife herself had such an interest in her working capacity, that she could recover something for its destruction. See also *Metropolitan R. R. Co.* v. *Johnson,* 90 Ga. 500, 16 S. E. 49. The impairment of a wife's working capacity was considered a proper element of damage in *Jordon* v. *Middlesex R. R. Co.,*

138 Mass. 425; *Harmon* v. *Old Colony R. R. Co.*, 165 Mass. 100, 42 N E. 505, 30 L. R. A. 658. In *Hamilton* v. *Great Falls Ry. Co.*, 17 Mont. 334, 43 Pac. 713, the court decided that a woman's working capacity was her own and she could recover for its impairment. The case of *Reading* v. *Pennsylvania R. R. Co.*, 52 N. J. L. 264, 19 Atl. 321, decided that the marriage of a woman could not affect her right to recover damages for the loss of her capacity to earn money. In New York, the wife was given the right to sue and recover damages for the loss of her earning power over and above her domestic services by Act of March 18, 1890. See *London* v. *Cunningham*, 1 Misc. 408, 20 N. Y. S. 882. Prior to the enactment of this statute, the wife could not recover for the impairment of her earning capacity unless the complaint contained an allegation that she was entitled to the fruits of her labor. See *Uransky* v. *D. D. E. B. & B. R. R. Co.*, 118 N. Y. 304, 23 N. E. 451, 16 Am. St. Rep. 759. On the other hand it has been held in *Giffin* v. *City of Lewiston*, 6 Idaho 231, 55 Pac. 545, that loss of ability to labor by the wife is community property, and damages might be recovered in an action by husband and wife. That the wife cannot recover for the impairment of her working capacity, see the following cases: *City of Joliet* v. *Conway*, 119 Ill. 489, 10 N. E. 223; *Hall* v. *Town of Manson*, 90 Iowa 585, 58 N. W. 881; *The A. T. & S. F. R. R. Co.* v. *McGinnis*, 46 Kan. 109, 26 Pac. 453; *Central City* v. *Engle*, 65 Neb. 885, 91 N. W. 849; *Carr* v. *Easton*, 7 Pa. Co. Ct. R. 403, on the ground that the wife had no independent employment; *Readdy* v. *Borough of Shamokin*, 137 Pa. St. 98, 20 Atl. 396; *Walter* v. *Kensinger*, 13 Pa. Co. Ct. R. 222.

Another question which frequently arises is the wife's right to recover for the alienation of her husband's affections. A leading English case on this subject is *Lynch* v. *Knight*, 9 H. L. Cases 589, in which it was decided that a wife could recover damages for the loss of the consortium of her husband. In a note on p. 228 of his work on Torts, Judge COOLEY in commenting on this case, says: "We see no reason why such an action should not be supported, where by statute the wife is allowed, for her own benefit, to sue for personal wrongs suffered by her." The law on this point is settled in most of the states. The following cases hold that the wife has the right to maintain such an action: *Humphrey* v. *Pope*, 122 Cal. 253, 54 Pac. 847, in which case it was held that the wife could maintain the action when her husband had deserted her; however, the statute has since been broadened so as to allow her to sue at all times in her own name. (California Statutes 1901, p. 126 § 370); *Williams* v. *Williams*, 20 Col. 51, 37 Pac. 614, on the ground that husband and wife are equal under the law in respect to the conjugal affection and society which each owes to the other; *Foot* v. *Card*, 58 Conn. 1, 18 Atl. 1027, 18 Am. St. Rep. 258, 6 L. R. A. 824; *Bassett* v. *Bassett*, 20 Ill. App. 543; *Betser* v. *Betser*, 186 Ill. 537, 58 N. E. 249, 78 Am. St. Rep. 303, 52 L. R. A. 630, decided on the ground that husband and wife are equal; *Haynes* v. *Nowlin*, 129 Ind. 581, 29 N. E. 389, 28 Am. St. Rep. 213, 14 L. R. A. 787, overruling the case of *Logan* v. *Logan*, 77 Ind. 558, decided ten years earlier, in which the court held that a married woman

could not maintain an action to recover for the loss of support and society of her husband, even though she was permitted by statute to sue in her own name for damages to her person or character. This case was decided by a majority of one; *Price* v. *Price,* 91 Iowa 693, 60 N. W. 202, 51 Am. St. Rep. 360, 29 L. R. A. 150, under a code provision which permitted a wife to sue in her own name to protect her rights; *Nevins* v. *Nevins,* 68 Kan. 410, 75 Pac. 492; also see *Mehrhoff* v. *Mehrhoff,* 26 Fed. 13; *Deitzman* v. *Mullin,* 108 Ky. 610, 57 S. W. 247, 22 Ky. Law Rep. 298, 94 Am. St. Rep. 390; 50 L. R. A. 808; *Wolf* v. *Frank,* 92 Md. 138, 48 Atl. 132, 52 L. R. A. 102, holding that the gist of the action is the loss of consortium; *Warren* v. *Warren,* 89 Mich. 123, 50 N. W. 842, 14 L. R. A. 545, which case expressly overrules the case of *Mitchell v. Mitchell,* 49 Mich. 68, where the court was equally divided; *Lockwood* v. *Lockwood,* 67 Minn. 476, 70 N. W. 784; *Tucker* v. *Tucker,* 74 Miss. 93, 19 So. 955, 32 L. R. A. 623, in which case the gravamen of the action was malice; *Clow* v. *Chapman,* 125 Mo. 101, 28 S. W. 328, 46 Am. St. Rep. 468, 26 L. R. A. 412, on the grounds that husband and wife are equal; *Hodgkinson* v. *Hodgkinson,* 43 Neb. 269, 61 N. W. 577, 27 L. R. A. 120, 47 Am. St. Rep. 759; *Seaver* v. *Adams,* 66 N. H. 142, 19 Atl. 776, 49 Am. St. Rep. 597, in which case the court held, "As in natural justice no reason exists why the right of the wife to maintain an action against the seductress of her husband should not be co-extensive with his right of action against her seducer, nothing but imperative necessity would justify a decision that she could not maintain such an action;" *Warner* v. *Miller,* 17 Abb. N. C. (N. Y.), 221; *Jaynes* v. *Jaynes,* 39 Hun (N. Y.) 40, distinguished from *Van Arman* v. *Ayers,* 67 Barb. (N. Y.) 544, where the wife was not permitted to recover for the alienation of her husband's affections under a statute which gave her the right to sue for all injuries affecting her person or character; *Bennett* v. *Bennett,* 116 N. Y. 584, 23 N. E. 17, 6 L. R. A. 553, which expressly overruled the case of *Van Arman* v. *Ayers,* supra; *King* v. *Hanson,* 13 N. D. 85, 99 N. W. 1085; *Westlake* v. *Westlake,* 34 Ohio St. 621, 32 Am. Rep. 397, decided by a majority of one; *Gernerd* v. *Gernerd,* 185 Pa. St. 233, 42 Wkly. Notes Cas. 49, 39 Atl. 884, 64 Am. St. Rep. 646, 40 L. R. A. 549, on the ground of equality of husband and wife; *Knapp* v. *Wing,* 72 Vt. 334, 47 Atl. 1075, the gist of the action being the loss of consortium; *Beach* v. *Brown,* 20 Wash. 266, 55 Pac. 46, 72 Am. St. Rep. 98, 43 L. R. A. 114, because a married woman's civil disabilities have all been removed. In one state the wife can maintain an action of this nature if her husband joins as a formal party. See *Smith* v. *Smith,* 98 Tenn. 101, 38 S. W. 439, 60 Am. St. Rep. 838. In North Carolina she may bring the action in her own name when her husband has deserted her. See *Brown* v. *Brown,* 121 N. C. 8, 27 S. E. 998, 38 L. R. A. 242.

On the other hand a few states have vigorously contested the doctrine that the wife can maintain an action of this nature. A leading case taking this view is *Doe* v. *Roe,* 82 Me. 503, 20 Atl. 83, 17 Am. St. Rep. 499, 8 L. R. A. 833, in which case the court held that the wife's remedy was by divorce, whereby she could obtain a restoration of all her property, and also secure

alimony. This action was brought under a statute which permitted a married woman to prosecute a suit at law or equity either in tort or contract in her own name for the preservation and protection of her property and personal rights or for redress of her injuries as if unmarried (Maine R. S. of 1883, ch. 61 § 5). The above holding has been sustained in *Morgan* v. *Martin,* 92 Me. 190. In Massachusetts the rule is somewhat different. That no action can be maintained by the wife for the alienation of her husband's affections, unaccompanied by adultery, see *Houghton* v. *Rice,* 174 Mass. 366, 47 L. R. A. 310; *Crocker* v. *Crocker,* 98 Fed. 702. These actions were brought under statutes which permitted a married woman to sue and be sued as if she were sole. (Stat. 1874, ch. 184 § 3, Pub. Stat. ch. 147 § 7). But the wife was permitted to recover damages for the intentional debauching of her husband, whereby his affections were alienated, in *Nolin* v. *Pearson,* 191 Mass. 283, 77 N. E. 890, 114 Am. St. Rep. 605, 4 L. R. A. (N. S.) 643. In New Jersey no action can be maintained. See *Hodge* v. *Wetzler,* 69 N. J. L. 490, 55 Atl. 49, see article on this case in 2 MICH. LAW REV., pp. 236-237. Another leading case holding that the wife cannot maintain an action of this nature is *Duffies* v. *Duffies,* 76 Wis, 374, 45 N. W. 522, 20 Am. St. Rep. 79, 8 L. R. A. 420, 31 Cent. Law Jour. 29, in which the wife's right of action was denied under a statute permitting her to sue for any injury to her person or character (Laws of 1881, ch. 99). This decision was approved in *Lonstorf* v. *Lonstorf,* 118 Wis. 159, 95 N. W. 961, although in the latter case there were two dissenting opinions. A leading Canadian case on this point is *Quick* v. *Church,* 23 Ont. 262, in which the wife was permitted to maintain her action under a statute permitting her to sue for protection and security of her separate property as if she were a feme sole. (Ontario R. S. of 1887 ch. 132). However this decision did not stand for any length of time, as it was expressly overruled four years later in the case of *Lellis* v. *Lambert,* 24 Ont. App. 653. Both these cases were brought under the same statute.

J. E. W.

WHAT IS CORPORATE ACTION?—The case of *American Soda Fountain Co.* v. *Stolzenbach* (1908), — N. J. L. —, 68 Atl. 1078, in which Judge DILL handed down the opinion, had for its main point, the question as to whether the acts of an officer of a corporation acting in his official capacity were the direct acts of the corporation itself. The facts in the case were briefly these: The American Soda Fountain Co., a New Jersey corporation, sold and delivered a fountain to one Brownley, who gave his notes therefor to the company, secured by a chattel mortgage upon the property, which was duly recorded. Subsequently, a judgment-creditor of the mortgagor seized the property in the mortgagor's possession. The American Soda Fountain Co. thereupon instituted an action in replevin, in which the defendant claimed title under a judgment, execution and sheriff's sale, the company, in opposition to this claim, relying upon its chattel mortgage. The statute of New Jersey concerning chattel mortgages requires that all such mortgages have annexed thereto "an affidavit or affirmation made and subscribed by the